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Attorney for Plaintiff

FILED

07 OCT 16 PM 2:02

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CP

DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BERNICE RAULLERSON,

Plaintiff,

vs.

CITY OF EL CAJON, GREG JOHNSON,
JOHN BENNETT and DOES I Through XX,
Inclusive,

Defendants.

CASE NO. 07 CV 2001
COMPLAINT FOR DAMAGES

W(AJB)

1. Negligence
2. Assault and Battery
3. False Arrest
4. Civil Rights Action

JURY TRIAL DEMANDED

Plaintiff alleges:

GENERAL ALLEGATIONS

1. Plaintiff, BERNICE RAULLERSON, is and was at all material times mentioned herein a resident of the CITY OF SAN DIEGO, State of California.

2. At all times mentioned herein, Defendants GREG JOHNSON, JOHN BENNETT and DOES I through XX were employees of Defendants CITY OF EL CAJON and in doing the acts hereinafter described acted within the course and scope of their employment. The acts of all Defendants, and each of them, were also done under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of California. Defendants GREG

1 JOHNSON, JOHN BENNETT and DOES I through XX, are sued individually and in their
2 capacities as police officers for the CITY OF EL CAJON.

3 3. Defendant, CITY OF EL CAJON, is a political sub-division of the State of
4 California, and is the employer of Defendants GREG JOHNSON, JOHN BENNETT and DOES I
5 through XX. The individual Defendants and each of them performed all herein alleged acts for,
6 and in the name of, Defendant CITY OF EL CAJON.
7

8 4. The true names or capacities whether individual, corporate, associate or otherwise,
9 of Defendants named herein as DOES I through XX are unknown to Plaintiff, who therefore sues
10 said Defendants by such fictitious names. Plaintiff will amend this complaint to show said
11 Defendants' true names and capacities when the same have been ascertained. Plaintiff is informed
12 and believes and thereon alleges, that each of the fictitiously named Defendants is responsible in
13 some manner for the occurrences herein alleged, and Plaintiff's injuries as herein alleged were
14 proximately caused by said Defendants.
15
16

17 5. Prior to the filing of this Complaint, Plaintiff filed a claim against Defendant
18 CITY OF EL CAJON for the injuries alleged herein. Within the past six months, Defendant has
19 denied the claim.
20

21 6. Jurisdiction is invoked pursuant to 28 U.S.C. §§1331(a)(3), and 42 U.S.C. §1983.
22 Venue is invoked under 28 U.S.C. §1391.

23 7. Supplemental jurisdiction over Plaintiff's state law claims is invoked pursuant to
24 28 U.S.C. §1367.
25
26

27 **FIRST CAUSE OF ACTION**
28 [Negligence]

1 8. Plaintiff realleges and incorporates by reference each and every allegation
2 contained in paragraphs One through Seven of the General Allegations of this Complaint as
3 though fully set forth herein.
4

5 9. On or about October 25, 2006, El Cajon police officers, including Defendants
6 GREG JOHNSON, JOHN BENNETT and DOES I through XX, contacted Plaintiff at 5316
7 Meade Avenue, Apt. 29 in San Diego. Plaintiff is informed and believes and thereupon alleges
8 that said officers, and each of them, were acting pursuant to their authority as officers of the El
9 Cajon Police Department.
10

11 10. At said time and place, Defendants GREG JOHNSON, JOHN BENNETT and
12 DOES I through XV and each of them, unnecessarily, unlawfully, negligently and carelessly used
13 excessive force upon Plaintiff causing serious and permanent injuries to Plaintiff while
14 purportedly attempting to execute a search warrant at her address which was intended to be
15 served on the apartment next door. Plaintiff is informed and believes and thereupon alleges that
16 said officers, and each of them, were acting pursuant to their authority as officers of the El Cajon
17 Police Department.
18

19 11. By reason of the acts alleged above, Defendants, and each of them, were negligent
20 and breached their duty of due care owed to Plaintiff.
21

22 12. As a direct and proximate result of the negligent and excessive actions of
23 Defendants, and each of them, Plaintiff was hurt and injured in her health, strength and activity,
24 sustaining injury to her body and shock and injury to her nervous system and person, all of said
25 injuries which has caused and has continued to cause great mental, physical and nervous pain and
26 suffering. Plaintiff is informed and believes that upon such information and belief alleges that
27 said injuries will result in permanent disability to Plaintiff all to her damage in a sum within the
28

1 jurisdiction of this Court in an amount to be proved at the time of trial.

2 13. As a further direct and proximate result of the negligence and excessive acts of
3 Defendants, and each of them, Plaintiff has been required to employ physicians and surgeons to
4 examine, treat and care for her and to incur medical and incidental expenses. Plaintiff is informed
5 and believes, and thereon alleges, that she will continue to require physicians and surgeons to
6 treat, examine and care for her and she will incur future associated medical and incidental
7 expenses. The exact amount of said medical and incidental expenses is unknown at this time and
8 Plaintiff will seek leave to amend this Complaint to state the same when fully ascertained, or as
9 according to proof at trial.
10
11

12
13 **SECOND CAUSE OF ACTION**

14 [Assault and Battery]

15 14. Plaintiff realleges and incorporates by reference each and every allegation
16 contained in paragraphs One through Seven of the General Allegations and Paragraphs Eight
17 through Thirteen of the First Cause of Action as though fully set forth herein.
18

19 15. On October 25, 2006, Defendants GREG JOHNSON, JOHN BENNETT and
20 DOES I through XX, and each of them, acting pursuant to their authority as police officers for
21 Defendant City of El Cajon, did unlawfully and maliciously assault and batter Plaintiff. Said
22 actions caused serious and permanent injuries to said Plaintiff as herein alleged.
23

24 16. By reason of the assault and battery alleged above, Plaintiff suffered the damages
25 alleged in Paragraphs Twelve and Thirteen, above.

26 18. The conduct of Defendants GREG JOHNSON, JOHN BENNETT and DOES I
27 through XX, and each of them, was taken with fraud, malice and oppression, as those terms are
28

1 defined in California Civil Code §§ 3294 (c)(1), (2), and (3). Accordingly, Plaintiff is entitled to
2 an award of exemplary damages against these Defendants only in an amount according to proof
3 at trial.
4

5 **THIRD CAUSE OF ACTION**
6 [False Arrest - Unlawful Seizure]

7 19. Plaintiff realleges and incorporates by reference each and every allegation
8 contained in paragraphs One through Seven of the General Allegations, paragraphs Eight through
9 Thirteen of the First Cause of Action, and paragraphs Fourteen through Eighteen of the Second
10 Cause of Action as though fully set forth herein.

11 20. In committing the acts alleged above, Defendants, and each of them, falsely
12 arrested and imprisoned Plaintiff in that Plaintiff was arrested without a warrant and without
13 reasonable or probable cause.
14

15 21. The acts alleged above also constituted an unlawful seizure in violation of the
16 Fourth Amendment to the United States Constitution entitling Plaintiff to damages pursuant to
17 Title 42 U.S.C. § 1983 *et seq.*
18

19 22. By reason of the false arrest and the unlawful seizure alleged above, Plaintiff
20 suffered the damages alleged in Paragraphs Twelve and Thirteen, above.

21 23. In doing the acts alleged herein, Defendants GREG JOHNSON, JOHN
22 BENNETT and DOES I through XX, acted maliciously and with a wanton disregard for the
23 rights and feelings of Plaintiff, and by reason thereof Plaintiff demands exemplary and punitive
24 damages in an amount to be proven at trial.
25

26 **FOURTH CAUSE OF ACTION**
27 [Civil Rights Action]

28 24. Plaintiff realleges and incorporates by reference each and every allegation

1 contained in paragraphs One through Seven of the General Allegations, paragraphs Eight through
 2 Thirteen of the First Cause of Action, paragraphs Fourteen through Eighteen of the Second Cause
 3 of Action, and paragraphs Twenty through Twenty Four of the Third Cause of Action and
 4 paragraphs Twenty Five through Twenty Nine of the Fourth Cause of Action, and paragraphs
 5 Thirty through Thirty One of the Fifth Cause of Action, and paragraphs Nineteen through Twenty
 6 Three of the Third Cause of Action as though fully set forth herein.

8 25. Each person enjoys a right to be left alone, and a right not to be deprived of life,
 9 liberty, or property without due process of law, or denied equal protection of the laws. Said right
 10 not to be deprived of life, liberty or property without due process of law is expressly included in
 11 the California Constitution Article 1, § 7, and is included by implication, within the penumbras
 12 of the Bill of Rights in the U.S. Constitution.

14 26. 42 USC § 1983, provides in pertinent part as follows:

16 Every person who, under color or any statute, ordinance, regulation,
 17 custom or usage of any State or Territory or the District of Columbia, subjects, or
 18 causes to be subjected, any citizen of the United States or other person within the
 19 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
 20 secured by the Constitution and laws, shall be liable to the party injured in an
 21 action at law, suit in equity, or other proper proceeding for redress.

22 27. Defendants, CITY OF EL CAJON, GREG JOHNSON, JOHN BENNETT and
 23 DOES I though XX, and each of them, acting under color or law, caused Plaintiff to be subjected
 24 to the deprivation of her rights of due process, as guaranteed them by the U.S. Constitution.

25 28. Defendant CITY OF EL CAJON is a person subject to liability under 42 USC
 26 Section 1983. There is a history of widespread abuse of citizens' rights within Defendant CITY
 27 OF EL CAJON.

28 29. Defendant CITY OF EL CAJON has a practice and custom of negligently

1 training, retaining, disciplining, and supervising its employees, officers and other law
 2 enforcement personnel with respect to observing and protecting citizens' rights. Defendant
 3 CITY OF EL CAJON has had notice of same. Defendant CITY OF EL CAJON has been grossly
 4 negligent in rectifying the situation and has acted with conscious indifference to the rights of
 5 citizens, such as Plaintiff. The injuries to Plaintiff, as alleged herein, would not have occurred
 6 but for Defendant's malfeasance in its regulation, custom, practices and procedures concerning
 7 the operation of its police department.
 8

9
 10 30. As a direct and proximate result of the above, Plaintiff has been deprived of her
 11 rights of due process and has suffered severe emotional distress, in addition to serious physical
 12 injuries. The full nature and extent of said damages has not as yet been ascertained. However,
 13 Plaintiff is informed and believes and based thereupon alleges, that said damages is within the
 14 jurisdictional limitations of this Court. Plaintiff will seek leave to amend this Complaint when
 15 the full nature and extent of said damages is fully ascertained.
 16

17 31. The conduct of Defendants, and each of them, was taken with fraud, malice and
 18 oppression, as those terms are defined in California Civil Code §§ 3294 (c) (1), (2), and (3).
 19 Accordingly, Plaintiff is entitled to an award of exemplary damages in an amount according to
 20 proof at trial.
 21

22 WHEREFORE, Plaintiffs prays for judgment against Defendants and each of them as
 23 follows:
 24

For the FIRST CAUSE OF ACTION against Defendants, and each of them:

- 25 1. For general damages according to proof;
- 26 2. Special damages, according to proof;
- 27 3. Prejudgment interest;
- 28 4. For costs of suit herein;

1 5. For such other and further relief as the Court may deem just proper.

2 For the SECOND CAUSE OF ACTION against Defendants, and each of them:

- 3 1. For general damages according to proof;
4 2. Special damages, according to proof;
5 3. Punitive damages, according to proof, as to the individual Defendants

6 only;

- 7 4. Prejudgment interest;
8 5. For costs of suit herein;
9 6. For such other and further relief as the Court may deem just proper.

10 For the THIRD CAUSE OF ACTION against Defendants, and each of them:

- 11 1. For general damages according to proof;
12 2. Special damages, according to proof;
13 3. Punitive damages, according to proof, as to the individual Defendants

14 only;

- 15 4. Prejudgment interest;
16 5. For costs of suit herein;
17 6. Reasonable attorney's fees; and
18 7. For such other and further relief as the Court may deem just and proper.

19 For the FOURTH CAUSE OF ACTION against Defendants, and each of them:

- 20 1. For general damages according to proof;
21 2. Special damages, according to proof;
22 3. Punitive damages, according to proof;
23 4. Prejudgment interest;
24 5. For costs of suit herein;
25 6. Reasonable attorney's fees; and,
26 7. For such other and further relief as the Court may deem just proper.

27 //

28 //

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: October 15, 2007

Respectfully Submitted,



DAN BACAL
Attorney for Plaintiff

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 143580 - SR
* * C O P Y * *
October 16, 2007
13:57:54**

Civ Fil Non-Pris

USAO #.: 07CV2001 CIV. FIL.
Judge.: THOMAS J WHELAN
Amount.: \$350.00 CK
Check#.: BC#2619

Total-> \$350.00

**FROM: RAULERSON V. CITY OF EL CAJON
DOES 1 - XX
CIVIL FILING**

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BERNICE RAULLERSON

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Dan Bacal, 275 East Douglas Avenue, Suite 114, El Cajon,
CA 92020 (619) 588-2064

DEFENDANTS JOHN BENNETT and
CITY OF EL CAJON, GREG JOHNSON, JOHN BENNETT and
DOES I Through XX Inclusive

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN U.S. PLAINTIFF CASES USE THE LOCATION OF
LAND INVOLVED. 07 CV 172001 W (AJB)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY					
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC § 1983

Brief description of cause:
Civil rights and negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 143580 AMOUNT 8350.5 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CR